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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FINISAR CORPORATION, a Delaware
corporation,

Plaintiff,

v.

U.S. BANK TRUST NATIONAL
ASSOCIATION, a national banking
association, not in its individual capacity but
solely in its capacity as indenture trustee in
behalf of all holders of Finisar Corporation's
5¼% Convertible Subordinated Notes due
2008, 2½% Convertible Senior Subordinated
Notes due 2010, and 2½% Convertible
Subordinated Notes due 2010; and DOES 1
through 10, inclusive,

Defendants.

AND RELATED COUNTERCLAIMS.

Case No. 5:07-CV-04052-JF (PVT)

**DECLARATION OF L. REX SEARS IN
SUPPORT OF PLAINTIFF FINISAR
CORPORATION'S OPPOSITION TO
U.S. BANK TRUST NATIONAL
ASSOCIATION'S MOTION FOR
SUMMARY JUDGMENT**

District Judge: Hon. Jeremy Fogel
Magistrate Judge: Hon. Patricia V. Trumbull

Initial Complaint Filed: June 22, 2007
Trial Date: Not Yet Set

1 I, L. Rex Sears, declare and state:

2 1. I am a shareholder of the law firm Workman Nydegger and one of the attorneys of
3 record representing plaintiff Finisar Corporation ("Finisar") in the above-captioned action (the
4 "Action"). I make this declaration based upon my own personal knowledge and records
5 maintained by Workman Nydegger, to which I have access in the course of fulfilling my duties
6 for Workman Nydegger and its clients (including Finisar), in the ordinary course of business.

7 2. Attached as Exhibit "A" hereto is a true and correct copy of Plaintiff Finisar
8 Corporation's First Set of Requests for Production of Documents to Defendant U.S. Bank Trust
9 National Association, propounded by Finisar to defendant U.S. Bank Trust National Association
10 ("U.S. Bank") in the Action on February 5, 2007.

11 3. Attached as Exhibit "B" hereto is a true and correct copy of Defendant U.S. Bank
12 Trust National Association's Response to Plaintiff Finisar Corporation's First Set of Requests for
13 Production of Documents.

14 4. Attached as Exhibit "C", "D", and "E" hereto are true and correct copies of
15 correspondence between attorneys representing Finisar and attorneys representing U.S. Bank in
16 the Action.

17 5. Attached as Exhibit "F" hereto are true and correct copies of documents produced
18 by U.S. Bank to Finisar in the Action on June 9, 2008, bearing production control nos. USB FIN
19 005740 and USB FIN 005779.

20 6. Attached as Exhibit "G" hereto are true and correct copies of documents produced
21 by U.S. Bank to Finisar in the Action on June 9, 2008, bearing production control nos. USB FIN
22 005946 and USB FIN 005987.

23 7. Attached as Exhibit "H" hereto are true and correct copies of documents produced
24 by U.S. Bank to Finisar in the Action on June 9, 2008, bearing production control nos. USB FIN
25 006326, USB FIN 006361, and USB FIN 006362.

26 8. Attached as Exhibit "I" hereto are true and correct copies of documents produced
27 by U.S. Bank to Finisar in the Action on June 9, 2008, bearing production control nos. USB FIN
28 006730, USB FIN 006784, and USB FIN 006785.

1.

1 9. Attached as Exhibit "J" hereto are true and correct copies of documents produced
2 by U.S. Bank to Finisar in the Action on June 9, 2008, bearing production control nos. USB FIN
3 006417 and USB FIN 006509.

4 10. Attached as Exhibit "K" hereto are true and correct copies of documents produced
5 by U.S. Bank to Finisar in the Action on June 9, 2008, bearing production control nos. USB FIN
6 006827, USB FIN 006896, and USB FIN 006897.

7 11. Plaintiff Finisar Corporation's Motion for Summary Judgment was filed in the
8 Action on June 6, 2008. Because the documents reproduced as Exhibits "F" through "K" hereto
9 were not produced until June 9, 2008, Finisar was unable to have U.S. Bank's designee
10 authenticate them at her March 26, 2008 deposition, Finisar did not have sufficient time to
11 propound and receive a response to a request for admission authenticating those documents
12 before filing its opposition to U.S. Bank Trust National Association's Motion for Summary
13 Judgment ("U.S. Bank's Motion"), and Finisar did not have a reasonable opportunity to have the
14 documents authenticated by other means before filing its opposition to U.S. Bank's Motion.
15 Finisar expects that additional discovery would show the documents to be authentic business
16 records of U.S. Bank.

17 12. During the March 26, 2008 deposition of Diana L. Jacobs, both individually and in
18 her capacity as the designee of U.S. Bank pursuant to Federal Rule of Civil Procedure 30(b)(6),
19 Finisar attempted to elicit testimony disclosing whatever information U.S. Bank might have
20 regarding injury suffered by the holders of any notes issued under the trust indentures at issue in
21 this action as a result of the acts complained of by U.S. Bank. U.S. Bank's counsel asserted that
22 the questions called for privileged information, and instructed Ms. Jacobs not to answer in a
23 manner that might disclose the substance of communications between U.S. Bank and the
24 aforementioned holders. Finisar has challenged U.S. Bank's assertion of privilege in a motion to
25 compel that was heard and taken under submission by Magistrate Judge Trumbull on June 17,
26 2008. Finisar expects that the testimony it seeks would undermine any claim that the
27 aforementioned holders have sustained any injury by reason of the Finisar actions or omissions
28 complained of by U.S. Bank.

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2008June 19, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: D. Anthony Rodriguez, drodriguez@mofo.com; Abby E. Wilkinson, awilkinson@faegre.com; Eva K. Schueller, eschueller@mofo.com; Michael B. Fisco, mfisco@faegre.com; and Paul T. Friedman, pfriedman@mofo.com.

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/s/ L. Rex Sears

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